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## The Challenges of the Right to Work and their effect on Residents in Direct Provision

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### Abstract

*In this essay MASI (The Movement of Asylum Seekers in Ireland) highlights the reasons why it is still necessary to continue with the 'right to work' campaign as the majority of international applicants, who are excluded from the directive, are left in limbo with no hope for their future while they wait for the outcome of their applications.*

### Introduction

In general, human beings want to have a sense of purpose, a drive to accomplish aspirations, and this contributes to a person's sense of being human.<sup>1</sup> When a person applies for International Protection in the Republic of Ireland, they will experience a lot of barriers as their sense of being will be severely challenged by the way the State treats people who seek asylum. This is because for a long time, the Irish government forbade International Protection applicants the right to work.<sup>2</sup> The restrictions on the right to work for people in the asylum process make life difficult, particularly for parents. Unemployed and lone parents are generally at risk of experiencing poverty.<sup>3</sup> The denial of access to the labour market effectively condemns children of International Protection applicants to a life of poverty as their parents are unable to provide for their children.<sup>4</sup> And the State provides significantly lower welfare supports to asylum seeker children "as a punitive deterrent" measure for having sought asylum in Ireland.<sup>5</sup> This subjects children in the asylum system to severe material deprivation as parents are deliberately placed in a position where they cannot meet their children's needs and wants.<sup>6</sup> Furthermore, the parents' sense of purpose is impacted when they are unable to provide for their children.

### The effects on children

Life for teenagers in the asylum system becomes stressful as they are unable to form relationships with other children their age because social and recreational activities require

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1 Murphy, Keogh, and Higgins, 2018: 4

2 Ibid; Fanning and Veale (2004: 244); Ní Raghallaigh and Thornton (2017: 10)

3 Fanning and Veale, 2004: 244

4 Ibid

5 Ibid; Fanning and Veale (2004: 244); Ní Raghallaigh and Thornton (2017: 12)

6 Fanning and Veale, 2004: 245

financial resources.<sup>7</sup> The lack of private personal space for teenagers who are often forced to share a bedroom with parents contributes to mental health problems.<sup>8</sup> This is contrary to the UN Convention on the Rights of the Child which requires that governments ensure that all children in their territory have a satisfactory standard of living.<sup>9</sup> The asylum system in the Republic of Ireland therefore violates the rights of the child through the experiences of material deprivation. Added to that is the long-standing policy of dispersal from Dublin to small towns with no adequate support, which was experienced by Vietnamese refugees in the 80s and still happens 30 years later.<sup>10</sup> Therefore, International Protection applicants in Ireland find themselves not only in small towns without adequate support, they also face restrictions on their right to work.<sup>11</sup> With a miniscule weekly allowance of €21.60, access to third level education becomes impossible without pro-bono scholarships.<sup>12</sup>

## Isolation

Meaningful integration becomes impossible to contemplate when people are dispersed to small towns and are divorced from the social and economic life of Ireland. Ní Raghallaigh and Thornton<sup>13</sup> argue that the Irish government created the system of Direct Provision, which provides accommodation and food, to deter people from seeking protection in Ireland. Thus, given the material deprivation experienced by children and adults in Direct Provision, and the average waiting time for processing applications of 2 years or more,<sup>14</sup> the asylum system is indeed designed to serve as a deterrent since International Protection applicants are deliberately placed on the margins of Irish society.<sup>15</sup> Indeed, Ní Raghallaigh and Thornton<sup>16</sup> point out that public discourse emanating from politicians is grounded on the need to curb “abuse of the asylum” process. It thus becomes easier to understand why the government has maintained the system of Direct Provision for many years in spite of violations of basic rights including the best interest of the child. The Ombudsman for Children has said that “no child should grow up in Direct Provision” as the system is not appropriate for accommodating children.<sup>17</sup> Holland<sup>18</sup> adds that children in Direct Provision feel unsafe because of the way men look at them. Some Direct Provision centres accommodate both families and single adults under the one roof. Children are often forced to share private spaces such as a bathroom with strangers. The refusal to integrate parents into the economic and social life of Ireland affects children adversely.

## The court case

There was a lot of hope when the Irish Supreme Court declared in February 2017 that the absolute ban on the right to work was unconstitutional; however, the government proposed very restrictive interim measures such as the requirement of a minimum income of €30,000 per year in addition to sectoral bans.<sup>19</sup> No international protection applicant was able to work under those conditions. Then the government announced that it would opt-in to the EU Directive on Reception Conditions for people seeking protection. That too came with restrictions. Khambule

7 Fanning and Veale, 2004: 246

8 Fanning and Veale, 2004: 246-247

9 Fanning and Veale, 2004: 248

10 Fanning, 2018: 97

11 Ní Raghallaigh and Thornton, 2017: 9

12 Ní Raghallaigh and Thornton, 2017: 10

13 Ní Raghallaigh and Thornton, 2017: 12

14 Murphy, Keogh and Higgins, 2018: 6

15 Ní Raghallaigh and Thornton, 2017: 12

16 Ní Raghallaigh and Thornton, 2017: 13

17 Hutton, 2018

18 Holland, 2017

19 Murphy, Keogh, and Higgins, 2018: 6-7

and Mulhall<sup>20</sup> point out that only people who have been waiting for a first instance decision for a minimum of nine months are eligible for the permit. This leaves out a number of people who have been in Direct Provision for longer as they are already in the appeals stage of their application. Mfaco<sup>21</sup> points out that the person who had taken the Irish government to court had already been through all the stages in the asylum process including appeals and judicial review. He argues that the decision to exclude those who are appealing undermines the Supreme Court as the court did not need to decide on the matter since the man had already received refugee status at the time of the court hearing. But the court proceeded to hear the matter because it was aware that a number of people find themselves in the very same situation and do not meet the criteria for access to the labour market as contemplated in current government policy. Hence the government is undermining the Supreme Court.

## Enforced Poverty

The refusal to grant international protection applicants the right to work has an enormous impact on the life of the people who are forced to live in poverty for years. The length of time spent in Direct Provision being on average at least 2 years, combined with the ban on the right to work for those in an appeal stage, results in a system of effective incarceration. A prisoner is divorced from the social and economic life of the country in the same manner as a person living in Direct Provision. When the Supreme Court heard the case on the right to work, the applicant argued that his right to dignity had been undermined by not being able to access the labour market and the court ruled that he was entitled to invoke constitutional rights that affect him as a human person, and the right to work was one of those rights as it allows a person to realise other rights.<sup>22</sup> By this reasoning, the Irish government has committed human rights violations by denying those in Direct Provision the right to work. In fact, when the government announced the new scheme allowing access to the labour market for asylum applicants, the Minister said this concerned 3,000 people.<sup>23</sup> Ní Bhroin<sup>24</sup> notes that out of 1,521 international protection applicants granted permission to work, only 330 secured work. Khambule and Mulhall<sup>25</sup> attribute this to the number of difficulties faced by people living in isolated Direct Provision centres such as access to public transport, opening bank accounts, and refusal by the government to issue driving licences. Murphy et al<sup>26</sup> and O'Donnell<sup>27</sup> both show that work is linked to self-worth and to the dignity of the person. McCrudden<sup>28</sup> points out that dignity has become a common feature in EU human rights law and is an inviolable right in the EU Charter of Fundamental Human Rights. The restrictions on the right to work for international protection applicants undermine that inviolable right to dignity.

## Conclusion

This essay has discussed the right to work for international protection applicants, taking into consideration the impact of the restrictions in place on children and adults in the asylum process in Ireland. While the State may claim to care and provide for the well-being of international protection applicants, there is enough evidence to show that the system undermines the best interest of the child by condemning them to a childhood of state-sponsored poverty and

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<sup>20</sup> Khambule and Mulhall (2018)

<sup>21</sup> Mfaco, 2018

<sup>22</sup> O'Donnell, 2017: 7

<sup>23</sup> Bardon and Pollak, 2018

<sup>24</sup> Ní Bhroin, 2018

<sup>25</sup> Khambule and Mulhall, 2018

<sup>26</sup> Murphy, Keogh, and Higgins, 2018: 12

<sup>27</sup> O'Donnell, 2017: 7

<sup>28</sup> McCrudden, 2008: 672

vulnerability. There is also enough evidence to conclude that the system of Direct Provision with its violations of fundamental human rights is a deliberate measure to fend off people from seeking protection in Ireland. What the essay has not discussed is the impact of the refusal of the right to work on women and LGBT+ international protection applicants who may experience life differently in comparison with other protection applicants. It is the call of MASI-Movement of Asylum Seekers in Ireland that international applicants are granted the permission to access the labour market earlier than 9 months with no discrimination.

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## **LUCKY KHAMBULE**

Lucky Khambule is an organiser, campaigner and activist for the rights of asylum seekers, migrants and refugee communities in Ireland. He is one of the founder members of the group called MASI-Movement of Asylum Seekers in Ireland. He served on Cork City Council as PPN member on social inclusion in 2015. Ireland has been his home for the past 5 years and has been active in multiple struggles for social justice, dignity and equality. He lived in direct provision from 2013 to 2016. He continues to be the voice of those trapped within the confinements of direct provision in Ireland and advocates for free education for asylum seekers. Lucky is currently working with MASI- on volunteering service as a coordinator of the group. Lucky has recently been elected to serve at the board of directors for Comhlamh in Ireland. He is the driving force behind the right to work campaign.